

THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 8313 of 2005

21-10-2005

Between:

Murthy Raghava Trinadha Rao & Others.

.....PETITIONERS

AND

Commissioner of Endowments, Government of Andhra Pradesh,
Department of Endowments & Others.

.....RESPONDENTS

For the Petitioners : MR.VEDULA SRINIVAS

For the Respondent No.1 : G.P.FOR ENDOWMENTS

For Respondents No. 2 & 3 : M/S.D.V.SITHARAM MURTHY

For Respondent No.4 : M/S.P.SRI RAGHU RAM

For Respondents No.5 to 23 : MR.V.L.N.G.K.Murthy

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> Head Note:

? CITATIONS:

(1) 1972 (1) MLJ 265

(2) AIR 1996 SC 1414

(3) 1997 (1) ALT 451

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THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No. 8313 OF 2005

ORDER : (Per Hon'ble Sri Bilal Nazki, ACJ)

This writ petition has been filed in public interest, seeking invocation of the provisions of Chapter-V of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') with respect to 2nd respondent-*Math*.

It is alleged that the *Math* is being subjected to misuse of *Hundi* collections. All the petitioners claimed that they are ardent devotees of Goddess Sri Sri Sri Lalitha Devi and they are deeply interested in proper management of the affairs of the 2nd respondent-*Math*. The 1st and 2nd petitioners have constructed a big hall known as 'Avyakthananda Darbar Hall' within the complex of *Math*, which is

used for various functions during festive seasons. The 1st petitioner also installed a Steel *Hundi* enclosed by iron grills inside the temple. 3rd petitioner is a Chartered Accountant by profession and he has been looking after the audit work of the accounts of the 2nd respondent-*Math*. All the petitioners were regular visitors to the temple and they have sincere concerns about proper administration of the *Math* and they have no personal interest in the matter.

It is submitted further that his Holiness Jagathguru Sri Dakshinamurthy Paramahansa Swamiji constructed the temple for Goddess Sri Sri Sri Lalitha Devi and the *Pratistha* of the statue of the Goddess took place on 11.02.1949. The entire property comprises of two acres of land. It belongs to his Holiness Jagathguru Sri Dakshinamurthy Paramahansa Swamiji and he dedicated the same to the temple. He was running the temple himself during his life time. He also dedicated all other properties in favour of the temple and the temple attracts thousands of devotees. Said Swamiji executed a Will on 23.10.1949, which was registered as document No.61 of 1949. By this Will, he gave his entire property in favour of *Lalitha Peetham*. He made it clear in the Will that he had already provided education to his children, and his children, grand children, great grand children and other heirs had no right over the properties owned by him and which were the subject matter of the Will. He also mentioned that he had purchased the properties in the year 1931 and he had also constructed the temple from his own expenses, under his personal supervision. In his Will, he also stated that the *Math* shall continue to remain as temple under private management of a *Sanyasi*, to be nominated by him as his successor. According to this Will, every *Sanyasi* had to nominate his successor and that *Sanyasi* would be the head of the *Peetham*. He also stated in his Will that the *Peetham* and the institutions connected with it, were brought by him into existence with a view to attain inalienable unity, peace and progress on right spiritual lines by the humanity of India and the world. He also stated that the properties of the *Peetham* should be owned according to the discretion of the head of the *Peetham* and should be utilized for

the proper worship in the temple. The founder settled his properties in favour of *Devasthanam* of Sri Lalitha Devi. The founder passed away on 28.06.1956. During his life time, he had nominated Sri Sri Sri Avyakthananda Maharaj Swami as his successor to become head of the *Lalitha Peetham*. Said successor managed the *Peetham* from 1956 till his death i.e. 19.06.1995. Sri Sri Sri Avyakthananda Maharaj Swami did not nominate any successor and in the absence of nomination of a successor, the 1st respondent ought to have appointed the head of the institution in exercise of his powers under Sections 52 and 53 of Act 30 of 1987. However, certain individuals formed a Trust on 14.02.1996, describing themselves as settlers of the Trust with a desire to carry on spiritual activity as ordained by the founder. They named the Trust as 'Sri Sri Sri Lalitha Devi Math' and started administering its affairs under the supervision of its Managing Trustee Mr.P.R.Rao. The formation of the Trust and the authority of the so-called Trustees were questionable since it was not in accordance with law or in accordance with the registered Will of the founder of the *Peetham*. Even under this Trust Deed, there was no provision for appointment of a *Sanyasi*. Before this Trust came into being, another group of persons, who includes the grand children of the founder of the *Peetham*, convened a meeting on 21-06-1995 and decided to nominate head of administration of the *Peetham*, as according to them, they had such a right, because they were the heirs of the original founder. These persons nominated *Peethadhipathi* of 'Siddeshwari Peetham, Mouna Swami Math, Courtallam, Tamilnadu', as head of the 2nd respondent *Peetham*, who accepted the same vide his letter dated 23-06-1998. His representative Sri Swami Ramananda Bharati started managing the affairs of the *Peetham* by staying at Visakhapatnam within the premises of 2nd respondent *Math*. *Peethadhipathi* of Siddeshwari Peetham, Sri Sri Sri Sivachidananda Bhati passed away in the year 2003, but his representative continued for some time to head the 2nd respondent *Math*. At present, it is alleged that the 3rd respondent is styling himself as the head of the 2nd respondent *Math* and is

managing its affairs. He stays at Couratallam, Tamilnadu, as head of the 'Siddeshwari Peetham' and he is also the head of the 'Raja Rajeswari Peetham, Guntur'. For ten to fifteen days at a time, in a year, he stays at 2nd respondent *Peetham* and he has left all the administration to its Manager Mr.V.Subba Rao. It is submitted that the appointment of 3rd and 4th respondents is not in accordance with the Will of the founder of the *Peetham* and the affairs of the 2nd respondent *Math* are taking place in an obscure manner. Though there is a *Hundi* for the collections donated by the devotees, the collections of the *Hundi* are not disclosed periodically. There is no accountability at all in the 2nd respondent *Peetham* and its affairs are conducted without any transparency. *Hundi* is opened during the mid night and its collections are not disclosed to the devotees, and the accounts are also not maintained. It is submitted that *Hundi* collections are more than rupees one lakh per month and this money has to be spent for the maintenance and development of the *Peetham*. The offerings like sarees, gold and silver ornaments donated by the devotees are also not accounted for and they are not even auctioned publicly. The Trust Board constituted in the year 1996 under the Managing Trusteeship of Major P.R.Rao has been side lined by the heirs of the founder of the *Math*. Members of the Trust Board made several representations to various authorities. A representation was also made to Hon'ble President of India. Though the matter was referred by the President's Secretariat to the Ministry of Law and Justice, no action was taken. Therefore, the petitioners approached this Court.

The petitioners' case is that since the temple is being mis-managed, the income of the temple is not being spent for its development and as the respondents are managing the temple, who have no right to do so in view of the Will of the founder, under Section 49 of the Act, therefore, the 1st respondent is duty bound to take action in terms of Sections 52 and 53 of the Act for the purpose of appointment of *Mathadhipathi* to the 2nd respondent *Math*.

Counter affidavits have been filed by all the respondents. The 3rd respondent, who claims to be the *Mathadhipathi* of 'Sri Sri Sri Lalitha Devi Math', has filed counter on his behalf and also on behalf of 2nd respondent. In this counter affidavit, it is stated that 3rd petitioner was appointed as an auditor for auditing the accounts of 2nd respondent *Math* for the Financial Year 2003-2004. Subsequently, he was discontinued. He has, therefore, grievance against the *Math* for not taking his services. It is also pointed out that while the 3rd petitioner was the auditor of the *Math* for the year 2003-2004, he did not point out any financial irregularity or lapses, but certified the accounts as being proper. Having himself certified the accounts to be properly maintained, it is strange that the 3rd petitioner has made the allegations of financial irregularities against the *Math*. 2nd petitioner, according to this counter, is proprietor of a welding shop. Earlier, he was engaged for doing some work in the *Math*, but he was charging exorbitant rates. He quoted Rs.25/- per square feet of welding work relating to raising a shed on the 1st floor of the *Math*. The 4th respondent, on verification from the market, came to know that the market rate was Rs.4/- per square feet. Therefore, the work was done through another person. The 2nd petitioner is, therefore, aggrieved. The 1st petitioner made frequent demands on the 4th respondent that the management of the *Math* should be handed over to him. As the 4th respondent did not yield to the harassment and the illegal demands, he has instituted the present writ petition with *malafide* intentions. It is further stated that the 2nd respondent *Math* has been declared to be a private *Math* by a judgment and decree, dated 19.01.1985 in O.S.No.261 of 1978 by the I Additional Subordinate Judge, Visakhapatnam. A signboard is displayed at the entrance of the *Math* that the *Peetham* is a private body and right of admission is reserved. It is, therefore, a private *Math*, bearing no public character and is being administered by private management as per the intention of the founder of the *Math*. The deponent was validly appointed as *Mathadhipathi* by his predecessor H.H.Swamy

Siva Chidananda Bharathi in his last Will and testament as his successor to *Lalitha Peetham*. He has taken charge in December 2002. 1st respondent has no power or jurisdiction to act under the provisions of Sections 52 and 53 of the Act. His appointment has not been disputed by any of the heirs or successors in interest of the founder.

4th respondent submitted that he was the Honorary Manager of the 2nd respondent *Math*. He has been directed to work in the said capacity by his Holiness Jagadguru Parivrajakacharya Sri Sri Sri Sidheswarananda Bharathi Swamiji, the *Peethadhipati* of *Lalitha Peetham*. He has joined as Manager of the *Math* in April 2003, after Swamiji took over as *Mathadhipathi* of 2nd respondent *Math*.

On behalf of 1st respondent, counter affidavit has been filed by Additional Commissioner in the office of the Commissioner, Endowment Department. He has denied all the assertions made in the writ petition with regard to mis-management of the temple. It is submitted that the original founder nominated, in his lifetime, Sri Sri Sri Avyakthananda Maharaj Swami as his successor and he managed the temple up to his death i.e. 19.06.1995. It is further submitted that the Assistant Commissioner of Endowments, Anakapalli, appointed a Trustee for the management of the institution, but Avyakthananda Maharaj Swamiji filed O.A.No.77 of 1964 before the Deputy Commissioner of Endowments, Kakinada under Section 57 of the Act 1951, for a declaration that the institution was a private institution. After elaborate inquiry, the Deputy Commissioner passed an order on 14.07.1966, holding that the institution is a public institution as defined in the Act and the provisions of the Endowments Act, 1951 and the Rules made therein, would apply. Aggrieved of that order, Avyakthananda Maharaj Swamiji filed A.P.No.20 of 1966 before the Commissioner of Endowments Department, A.P., Hyderabad. The Commissioner, by his order dated 02.07.1977,

declared the institution as a Public *Math*. Thereafter, a suit was filed against this finding, being O.S.No.261 of 1978 before the Additional Subordinate Judge at Visakhapatnam for a declaration that the order passed by the Commissioner was not valid. The I Additional Subordinate Judge, Visakhapatnam, by his order dated 19.01.1985, set aside the order of the Commissioner and declared the institution to be a private institution. Appeal was filed by the Department before the High Court of Andhra Pradesh. Therefore, the Endowments Department never managed the *Math* at any point of time. It is, however, admitted that a group of persons formed a Trust after the death of *Sanyasi*, who had failed to nominate a head. They described themselves as settlers of the trust with a desire to carry on spiritual activity as ordained by the founder. This Trust was formed on 14.02.1996, but even in the said Trust Deed, they failed to appoint *Sanyasi* to head the *Peetham* and there remained a vacancy to the office of the head of the *Peetham*. Another group of persons, who includes the grand children of the founder of the *Peetham*, convened a meeting on 21.06.1995, and decided that the power of nomination of the *Lalitha Peetham* vests with the heirs of the original founder and the said Committee of persons nominated the *Peethadhipathi* of Siddeshwari Peetham, Mouna Swami Math, Courtallam, Tamilnadu, as head of the 2nd respondent *Peetham*, who accepted the same by his letter dated 23.06.1998.

There are some interveners also, being represented by senior counsel Mr.V.L.N.G.K.Murthy, who reiterated the case of respondents No.1 to 4.

In the light of these pleadings, the only question to be answered is, whether the present *Mathadhipathi* has been appointed legally to the *Math*, and if his appointment is defective, what directions this Court can give. The admitted case of the parties is that the *Math* was established by Sri Sri Sri Dakshinamurthy Paramahansa Swamiji, after donating his own properties. He created the *Math* and declared in his Will that the head of the *Math* shall nominate his successor. He himself nominated a person to be the head of the *Math* after his

death. The founder died in 1956 and his successor continued to head the *Math* up to 1995. In 1995, the next head of the *Math* passed away, but he did not nominate his successor. Thereafter, a Trust was created, which included the heirs of the original founder and they nominated the *Peethadhipathi* of 'Siddeshwari Peetham, Mouna Swami Math, Courtallam, Tamilnadu', Sri Sri Sri Siva Chidananda Bhati, as head of the temple, who accepted the same by his letter dated 23.06.1998. Sri Sri Sri Siva Chidananda Bhati also died in the year 2003. The contention of respondents is that Sri Sri Sri Siva Chidananda Bhati was appointed as head of the *Math* in the year 1998 and there was no grievance of any kind by the petitioners and said Swami had nominated the 3rd respondent as *Mathadhipathi* in his Will. Therefore, the appointment of *Mathadhipathi* is in accordance with the Will of the founder. Since the third *Mathadhipathi* could not be appointed according to the Will of the founder, as the 2nd *Mathadhipathi* failed to nominate his successor, grievance if any, to the petitioners, could have been made at the time of appointment of third *Mathadhipathi*. The 3rd *Mathadhipathi* managed the affairs of the *Math* for five years and before his death, he nominated his successor.

The only ground taken in the writ petition is mentioned in para 7 and it is based on the assumption that the nominee of the founder of the 2nd respondent *Math* did not nominate his successor and it is only for the 1st respondent herein to appoint the head of the 2nd respondent *Math* in accordance with law. This argument has been resisted by the respondents, as has been pointed out hereinabove. The respondents have also claimed that the *Math* is a private *Math* and not a public *Math* and therefore, the provisions of the Act would not apply.

In order to appreciate these arguments, a glance at the Act is necessary. '*Math*' is defined under Section 2(17) of the Act, as under;

"2(17) 'Math' means a Hindu Religions institution presided over by a person, whose principal duty is to engage himself in the teaching

and propagation of Hindu religion and philosophy or the teachings and philosophy of the denomination, sect or sampradaya to which the Math belongs and in imparting religious instruction and training and rendering spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples; and includes any place or places of religious worship, instruction or training which are appurtenant to the institution.”

‘Religious endowments’ is defined under Section 2(22) as under;

“2(22) ‘religious endowments’ means property (including movable property), and religious offerings whether in cash or kind, given or endowed for the support of a religious institution or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof.

Explanation I:- *All property which belonged to or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a religious endowment within the meaning of this definition, notwithstanding that, whether before or after the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed.*

Explanation II:- *Any Inam granted to an archaka, service-holder or other employee of a religious Institution or the performance of any service or charity in connection with a religious institution shall not be deemed to be a personal gift to the archaka, service-holder or employee, notwithstanding the grant or ryotwari patta to an archaka, service-holder or employee under the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 but shall be deemed to be a religious endowment.”*

Chapter-V of the Act specifically deals with Maths and their administration. Chapter-V is headed as ‘Maths and Specific Endowments Attached Thereto’. Section 47 defines ‘Mathadhipathi’

and according to this definition, any person whether known as Mahant or by any other name, in whom the administration and management of a *Math* or specific endowment attached to a *Math* are vested. Under Section 48, it is laid that provisions of Sections 18, 19, 20, 21, 22, 25 and 25 shall not apply to *Maths*. Section 51 deals with removal of *Mathadhipathi* and the Commissioner has been given a power to initiate proceedings for removing a *Mathadhipathi* or a Trustee attached to the *Math* on the grounds mentioned in Section 51 of the Act. Section 51 (e) lay down that a *Mathadhipathi* can be removed if he is guilty of breach of trust, or misappropriation in respect of any of the properties of the *Math*. Though such an allegation has been made in the writ petition against the 3rd respondent, but there is no material before this Court to come to a conclusion that there has been misappropriation and even the 1st respondent has denied such allegations. Section 53 lays down that when vacancy occurs of a *Mathadhipathi*, that should be filled up in accordance with the Rule of Succession laid by the founder and if there is no such rule laid down by the founder, then appointment should be made according to usage and custom of the *Math* and if there is no such usage or custom, the appointment shall be made with the permission of the Commissioner of Endowments. Section 53(2) lays down the qualifications of *Mathadhipathi*. Section 54 gives power to the *Mathadhipathi* to nominate his successor. Section 54 (2) relates to circumstances, where *Mathadhipathi* fails to nominate his successor under sub-Section (1) or where there is no *Mathadhipathi*. In such an eventuality, the Commissioner shall, after due publication, convene a meeting with the *Mathadhipathis* of other *Maths* of the same *Sampradayam* and the disciples of the *Math*, and recognize the person nominated in such meetings as *Mathadhipathi* subject to the provisions of the Act.

Even if one goes in accordance with Section 54 of the Act, there was no challenge to the appointment of third *Mathadhipathi* of the *Math*. He continued from 1998 to 2003 and he was recognized as

Mathadhipathi of the *Math* and he has validly nominated the present *Mathadhipathi* i.e. 3rd respondent. Even if it is conceded that there was some irregularity in the appointment of the 3rd *Mathadhipathi*, there is no such irregularity in the appointment of the present *Mathadhipathi* i.e. 3rd respondent. Even in this writ petition, the petitioners have not challenged the nomination of the third *Mathadhipathi*, who was the predecessor of the present *Mathadhipathi*.

The parties have placed reference on many judgments. One of them is the judgment reported in ***Vadivelu Mudaliar v. C.N.Kuppuswami Mudaliar***. This judgment has elaborately discussed the law on the Trusts in Hindu Law and was of the view that a Trust should not fail for want of Trustees. The administration of the Trust has to vest with some one. In para 31 of the judgment, it is laid down;

“31. As a trust cannot fail for want of trustees the administration of the trust must vest with someone or the Court of equity should appoint some person to administer the trust. The law on this point is that if all the trustees fail to administer the trust or repudiate the trust, the property dedicated to the trust would revert in the disposer or in his legal representatives, namely, heirs at law if he is dead, and in such cases, they become by operation of law the trustees for the purpose of administration of trust. In cases where there are no legal representatives or if legal representatives, even if available, do not take charge of the trust for some reason or other, then it will be for the Court to interfere for the purpose of appointing a trustee or trustees for the administration of the trust. On this aspect, it is stated in Halsbury’s Laws of England, Volume 38, Paragraph 1550, page 913, as follows:-

“.....If all the trustees disclaim, the property reverts in the disposer, or, if he is dead, in his legal representative, who becomes, by operation of law, the trustee thereof for the purposes of the trust.

The disclaimer of the trustee, or of all the trustees nominated by the disposer, does not avoid the trust; but a new trustee will be appointed by a Court of equity to execute it.....”

It specifically laid down the law, which governs the present case also, in para 32, as under;

“32. According to Hindu Law, when the trust is founded, the trusteeship vests in the founder and his heirs, and if the founder had prescribed a line of succession to the office of the trust but the succession to the office had entirely failed, the right of management reverts to the founder and his heirs.”

Another judgment to which a reference has been made is, **Sri Sri Lakshamana Yatendrulu and others V. State of Andhra Pradesh and another**. In para 28 of this judgment, the Court dealt with Section 54 of the Act as under;

“28. Section 54 deals with nomination of the Mathadhipathi. Shri Parasaran, learned Senior Counsel while addressing his arguments which need no repetition, raised a very strong objection and fervently, repeatedly, forcibly and persuasively argued that the secular authority should not be permitted to interpose in the nomination of Mahant by act of acceptance of the nominated Mathadhipathi on diverse grounds mentioned hereinbefore. Having given our due careful and very anxious consideration to his arguments and equally palatable contentions of Shri P.P. Rao, we find that role of the Commissioner in that behalf is minimal. It is seen that by operation of sub-section (1) with a non obstante clause, viz., “subject to provisions of Section 53”, the basic qualifications required for a person to be nominated as Mathadhipathi are enumerated in sub-section (2) of Section 53. The approach to this problem, which has to be kept in view by the Commissioner, has already been stated and bears no repetition. The Mahant may himself nominate his successor. In other words, the predecessor Mahant should keep in mind the prohibited grounds enumerated in sub-section (1) of Section 51 and qualifications mentioned in Section 53(2) before he nominates the successor. He is the best person to adjudge among his disciples or any other persons, the most fitting person eminently suited to succeed him. He would be actuated solely with religious fervour and capacity of his successor to properly and efficiently manage the trust, to elongate the object and purpose of the Math according to the established traditions, usage, customs and Sampradayams. He is enjoined, after due deliberation, to decide his successor and to intimate such nomination to the Commissioner within 90 days. The Commissioner is further required to recognise such nomination. Nomination ipso facto cannot be

recognised by the Commissioner.

Reference has also been made to a judgment in ***H.H.Jagadguru Channa Basava Mahaswamy V. Commissioner of Endowments, A.P. and others***. In this judgment also, it was held that the power to nominate Mathadhipathi was with the Mathadhipathi, who could appoint a successor, but if there was a failure to appoint a successor, then the recourse could be taken to Section 53 and 54 of the Act.

There are certain judgments produced by the parties to suggest that it was a private trust. The respondents have also referred to the judgment and decree of a civil Court, as stated hereinabove. But we do not think that it is necessary to go into the question whether the trust was a public trust or a private trust.

Besides the reasons stated hereinabove, we have also serious doubts about the *bona fides* of the petitioners in view of what has been stated in counter affidavits with regard to the petitioners, especially with regard to the 2nd and 3rd petitioners. The role of 2nd petitioner is more reprehensible, as he had been the auditor of the Trust even in the year 2003-2004, when the 3rd *Mathadhipathi* was holding the office.

For all these reasons, we do not find merit in the writ petition, which is accordingly dismissed. No order as to costs.

(BILAL NAZKI, ACJ)

21-10-2005

(G.CHANDRAIAH, J)

N.B:

L.R.Copies to be marked.

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